(2002) 07 OHC CK 0092

In the Orissa High Court

Case No : First Appeal No. 122 of 1995

Special Land Acquisition Officer, Rengali Irrigation Project — APPELLANT

Vs

Birabar Sahoo and Others — RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Land Acquisition Act, 1984 — Section 18, 23, 4(1), 54

Citation : (2002) 07 OHC CK 0092

Hon'ble Judges : B. Panigrahi, J

Bench : Single Bench

Advocate : P.K. Choudhury, Addl. Standing, for the Appellant; D.P. Dhal, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—This is an appeal u/s 54 of the Land Acquisition Act challenging the award passed in Land Acquisition Misc. Case No. 76 of 1994 by the learned Civil Judge (Senior Division). Kamakhayanagar wherein-the referral Court has determined the compensation payable to the Respondent at the rate of Rs. 32.000/- per acre towards the cost of acquired land and at the rate of Rs. 125/- for each Mahul tree having girth between 1'' to 2'' and @ Rs. 375/- for each Mahul tree having a girth between 3'' to 4'' and @ Rs. 1000/- for each mango and mahul tree haying 6 feet girth Besides the above the referral Court has granted statutory solatium at the rate of 30% on the enhanced compensation and Interest @ 9% per annum on the excess amount of compensation from the: date of acquisition of the land.

2. The Respondents were the recorded owner of the land measuring Ac. 0.76 decimals appertaining to Plot No. 5319 under Khata No. 227 of village Mukfapasi. The land was recorded as Sarad-III kisam and there were 24 numbers of Mahul frees and one mango tree on the aforesaid land. The land was acquired pursuant a notification u/s 4(1) of the Land Acquisition Act for Rengali Irrigation Protect and compensation was paid to the Petitioner. The value for the land was fixed at

Rs. 23.000/- per acre whereas all the trees were valued at Rs. 1030/-. Therefore the Respondent being dissatisfied with the compensation fixed by the Land Acquisition Officer filed an objection before him and made a prayer to refer the matter to the Civil Court. Accordingly, the Land Acquisition Officer referred the matter the Civil Court u/s 18 of the Land-Acquisition Act. Neither-parties adduced any documentary evidence before the Court below. The claimants were examined before the referral Court and claimed that by the time of acquisition the agricultural lands were being sold at the rate of Rs. 2000/- per gunth their village, but no sale deed was filed in supports of their claim. However for a land situated in the same vicinity the referral Court had already fixed at Rs. 32,000/- per acre for Sarad-III Kisam fand in Land Acquisition Misc. Case No. 60 of 1994. Therefore, the referral Court adopted the same valuation for the land acquired from the Respondent. The acquires fand in L.A. Misc. Case No. 60 of 1994 and the land in the present case are situated in the same village Muktapasi. There is no evidence to suggest that the Respondents land was inferior to the land which was acquired in L.A. Misc. Case No. 60 of 1994. Even though the claimants were examined, themselves as witnesses, but there was no evidence adduced on behalf of the Land Acquisition Officer. Therefore, the learned referral Court was inclined to accept the statement of the owner and fixed compensation at the rate of Rs. 32,000/- per acre for Sarad-III kisam land. In so far as the valuation of the trees was concerned the learned referral Court fixed at the rate of Rs. 125/- for each Mahul tree, having girth between 1'' to 2'' and @ Rs. 375/- for each Mahul tree having a girth between 3'' to 4''and @ Rs. 1000/- for each mango and mahul tree having 6 feet girth. The Land Acquisition Officer had however fixed Rs. 23,000/- per acre for Sarad-III kisam Land. Such valuation was assessed on the basis of some sale deeds on the year 1988-89

3. While determining the compensation u/s 23 of the Land Acquisition Act the referral Court should bear in mind the fair arid reasonable age quate market value of the land which was proposed to be acquitted. The market value is always a question of fact depending upon the evidence adduced and probabilities arose in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in the locality in which the acquired lands are situated as on the date of notification u/s 4(1) of the Act. While determining the market value, the land Acquisition Officer had not taken into account the valuation which was prevalent on the date of notification u/s 4(1) of the Act, but was guided by the valuation which was prevalent 2 to 3 years before such notification. The referral Court did not agree with the valuation fixed by the Land Acquisition Officer. Since there has been no evidence to counter the claim, it is not possible to interfere with the order passed by the learned Civil Judge (Senior Division). The value of Sarad-III kisam land has been fixed at Rs. 32.000/- per acre which does not appear to be excess. In F.A. Nos. 27 and 40 of 1995 this Court has also accepted the said valuation fixed by the referral Court.

Accordingly, I do not find any merit in this appeal and the same is dismissed, but the circumstances without cost.

